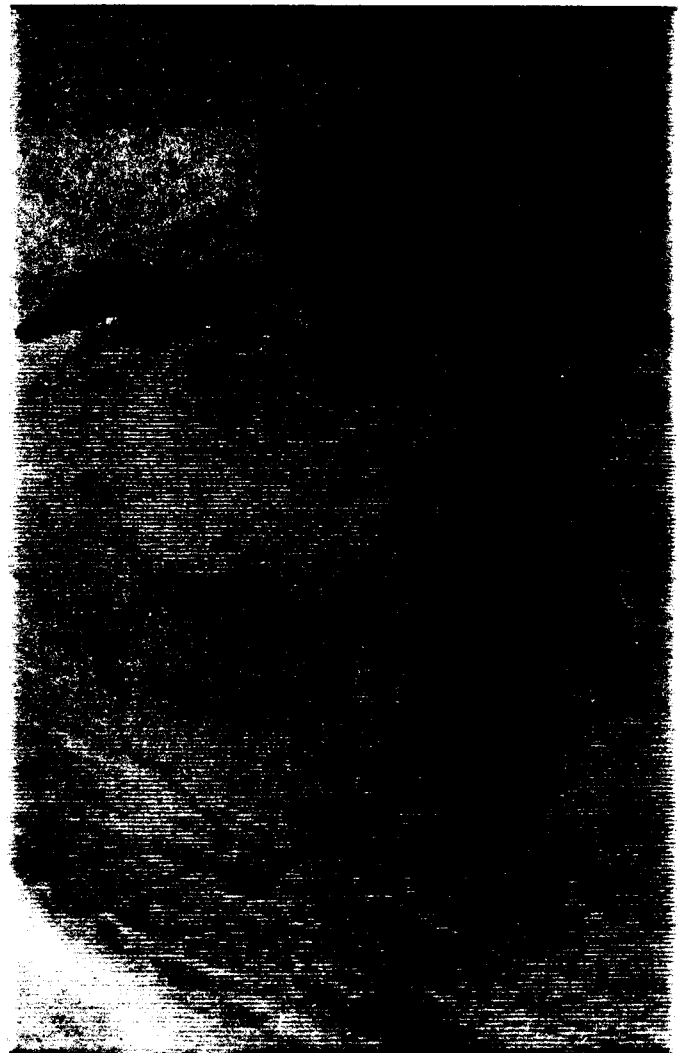


Living With The Lakes: Challenges and Opportunities

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Annex C
Interests, Policies, and
Decision Making: Prospects for
Managing the Water Levels Issue
in the Great Lakes —
St. Lawrence River Basin

LIVING WITH THE LAKES:
CHALLENGES
AND
OPPORTUNITIES

ANNEX C

INTERESTS, POLICIES AND DECISION MAKING:
PROSPECTS FOR MANAGING THE WATER LEVELS ISSUE
IN THE GREAT LAKES - ST. LAWRENCE RIVER BASIN

PREPARED BY FUNCTIONAL GROUP 3
FOR THE PROJECT MANAGEMENT TEAM

International Joint Commission
Water Levels Reference Study

JUNE, 1989

PHASE 1 REPORT OUTLINE
IJC FLUCTUATING WATER LEVELS STUDY

MAIN REPORT

ANNEX A - PAST AND FUTURE WATER LEVEL FLUCTUATIONS

ANNEX B - ENVIRONMENTAL FEATURES, PROCESSES AND IMPACTS: AN
ECOSYSTEM PERSPECTIVE ON THE GREAT LAKES - ST.
LAWRENCE RIVER SYSTEM

ANNEX C - INTERESTS, POLICIES AND DECISION MAKING: PROSPECTS
FOR MANAGING THE WATER LEVELS ISSUE IN THE GREAT
LAKES - ST. LAWRENCE RIVER BASIN

ANNEX D - THE GREAT LAKES ECOSYSTEM PERSPECTIVE: IMPLICATIONS
FOR WATER LEVELS MANAGEMENT

ANNEX E - POTENTIAL ACTIONS TO DEAL WITH THE ADVERSE
CONSEQUENCES OF FLUCTUATING WATER LEVELS

ANNEX F - EVALUATION INSTRUMENT

ANNEX G - PUBLIC INFORMATION PROGRAM

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Section 7 of this Report is largely based on the working documents prepared by joint U.S. - Canada teams, listed in Appendix 4. The compilation of these documents and the interpretations in this Annex included extensive involvement with representatives of various interests. Sections 5 and 9 draw heavily upon the work of Mike Donahue. Various sections of the Annex benefitted from critiques by individuals outside FG3, notably Reid Kruetzwiser, Bob Roden, Pearl McKeen, Doug Brown, Robert Spargo, Bruce Mitchell, and Ruth Edgett. The compilation of the manuscript was greatly assisted by Madeleine Ward.

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ANNEX C

INTERESTS, POLICIES & DECISION-MAKING: PROSPECTS FOR MANAGING THE WATER LEVELS ISSUE IN THE GREAT LAKES - ST. LAWRENCE RIVER BASIN

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EXECUTIVE SUMMARY

The broad purpose of the IJC Water Levels Reference Study is to examine the recurring problems posed by fluctuating water levels in the Great Lakes - St. Lawrence River Basin and to assist governments in deciding what might be done to deal with the issue. This report represents a distinct contribution to the achievement of that purpose, by seeking to better understand the social, economic and political dimensions of the issue and the on-going challenge to governments. It focuses on interests' concerns, their views of the problems and solutions, and how these relate to the responsibilities of governments. The intent is to identify the key elements of the political challenge to governments; in particular, the reasons why interests petition governments for action, and what government response, if any, is called for. These concerns and positions of interests are compared to the stated mandates of governments, together with the current knowledge about fluctuating water levels and associated ecological processes. The findings from this approach provide a basis for identifying actions of governments which can address the management issues associated with fluctuating water levels.

Within the Great Lakes - St. Lawrence River Basin there are multiple interests who have made decisions to use the lakes in anticipation of receiving certain benefits. The interests have been categorized into the following classes: riparians (shoreline property owners), environmental groups, electric power, transportation, commercial and industrial companies, recreationists, commercial fishing, and agricultural interests, native nations, and agencies of governments. When interests' expectations about gains and costs associated with their use of the lakes are not met, they often petition governments for action. At other times, interests may perceive that some action by governments can improve or worsen their situation, even if they have not experienced consequences from their decision to use the lakes. As a result, these interests may petition governments to adopt or reject measures that will affect their welfare. Governments become particularly sensitized to the issue when interests petition for action.

The analysis shows that the experiences, factual understanding and values of the interests vary greatly both among and within interest classes. This situation makes it extremely difficult to establish a basis for evaluating the merit of interests' petitions and the appropriateness of government actions. Consequently, the approach taken in this investigation has been to distill existing policy themes or guiding principles of government, and use them to guide the analysis rather than to establish entirely new judgement on government responsibility.

Investigations reveal that discernible and common tendencies in policy exist between the governments of the two countries. The policy themes pertinent to the water levels management issue have been identified as follows:

- o Governments seek to promote "informed" decision making by interests.
- o Governments seek to promote "responsible" decision making by interests.

- o Governments seek to assure resiliency of interests to adapt to natural hazards.
- o Governments seek to promote the development of the economy, subject to the imperatives of long term environmental protection
- o Governments seek to promote, and expect to have, an "open" planning process, giving multiple interests access to decision making processes.

These policy themes provide the foundation for interpreting the positions of the interests, and for isolating those instances where government action is warranted, based upon policy.

The approach used to interpret the positions of interests in light of the policies and responsibilities of governments has sought to understand the decision process interests go through, either consciously or subconsciously, when choosing to use the lakes and related land resources, and how and when such use results in calls for government action. This study has identified four areas where petitioning relates directly to the established responsibility of federal governments. These are when the interests' position seems to be related to:

- o surprise due to inadequate information,
- o lack of resiliency to natural hazards,
- o benefit enhancement,
- o cost shifting.

The analysis of why the interests take their positions and how their concerns and motivations relate to the policies of governments reveals that many of the interests were "surprised" by some element of the Great Lakes system, such as the levels, the degree of flooding or erosion, or the failure of governments to do something about these things. This "surprise" is relevant to governments because of their commitment to "informed and responsible" decision making. Also a concern to governments is lack of resiliency by interests to the costs of natural hazards, when this lack of resiliency reflects a failure in promoting informed investment decisions or when it threatens an economic sector or creates widespread hardship. Some petitions by interests seem to seek a shifting of costs associated with an investment to others, in particular the environment or the general taxpayer. Government policies discourage cost shifting and seek to protect the environment. Other interests support measures that would enhance their investments. This is something governments might approve of, but not if it requires modification of the physical system at public expense or at cost to the environment.

Investigations found that measures to regulate levels and flows (Type 1) receive the most attention from interests, with support coming strongly from riparian groups and with opposition pronounced in environmental interests. Those not seeking Type 1 measures petition for the status quo or more

localized responses. Generally, there is limited knowledge of, and little widespread support for measures which directly restrict (Type 3) or indirectly influence (Type 4) the uses of land and water. However, there does appear to be general, if unfocused, support for measures enhancing information, particularly about the physical system.

The institutional analysis reveals that the process for making resource use decisions has grown increasingly complex. Fiscal and environmental constraints on governments are more pronounced, and a more active public demands a place in the decision process. Despite governments' commitment to public involvement, such participation is not achieved within the current decision making structures. Much of the disagreement over the issue can be traced to the current institutional arrangements which are not designed to facilitate mutual learning or resolution of disputes. While the governance setting is extremely complex, this complexity does not appear to be the primary institutional problem, which seems to lie more with the traditional technical methods of evaluation. Any decision making process must recognize the dynamic and uncertain nature of the system and work within its' complexities. Some alternative decision making processes are available which work towards consensus building as an approach to deal with conflicts inherent in the water levels issue and decision making.

Recommendations to federal governments have been organized into six broad categories which together make up an action program. The main recommendations are that:

- o Governments confirm/articulate their policies and responsibilities.
- o Governments determine specific information needs about the Great Lakes Basin system and develop appropriate information bases.
- o Governments establish vehicles for, and commit to, the use of communications.
- o Governments make clear that new Type 1 measures are extremely unlikely to be implemented in the foreseeable future.
- o Government commit appropriate resources to the design and development of measure other than regulatory works.
- o Governments establish contingency plans for extreme events.

FOREWORD

The Canadian and United States federal governments sent a Reference (August 1986) to the International Joint Commission to study the recurring problems posed by fluctuating water levels in the Great Lakes - St. Lawrence River Basin and to report on actions which governments might take to manage the issue. The structure established for this Study was a Project Management Team, comprised of five Functional Groups, dealing with such dimensions as hydrology, coastal ecology and resources, social and economic impacts, public participation, and system synthesis. The products of the Study are captured in a series of Annex reports, which correspond to some degree to the Functional groups, and a main report.

This document incorporates the principal products of Functional Group 3 (FG3), Socio-Economic and Environmental Assessment. The initial responsibilities of FG3 included developing a framework to assist in the evaluation of courses of action, designing an inventory of measures, identifying relevant interests, assessing socio-economic and environmental impacts, and considering the policy and institutional context within which decisions are made. Preliminary investigations indicated that conventional approaches to assessing impacts, developed largely for specific projects, were inappropriate for resolving the management dilemmas associated with fluctuating water levels. This report adopts a different approach, in which an understanding of the perspectives and responsibilities of the public and of governments is fundamental.

Governments make decisions about the laws which regulate and constrain individual behaviour and those which determine the raising and spending of revenues. The management of water and related land resources for the Great Lakes - St. Lawrence River Basin requires continuing attention to these governmental roles, as demonstrated by the issues and concerns expressed under the current Water Levels Reference Study. The necessity for joint decisions over the international waters of the Great Lakes complicates the governmental decision challenge. To facilitate decisions where joint action between Canada and the United States is necessary, the Boundary Waters Treaty of 1909 created the International Joint Commission (IJC) and empowered it with specific authorities for facilitating bi-national decision making on water resources. The success of the IJC has been associated with early actions that addressed the potential and merit of lake levels management, and the resulting implementation of such actions. More recent IJC emphasis has been placed upon water quality concerns. However the issues associated with lake levels continue to be assigned to the IJC for review.

After the high water period of 1985-86, the Canadian and United States federal governments requested that the IJC report to them on the problems posed to basin interests by fluctuating lake levels and that it provide an assessment of measures which might be considered for addressing such problems. In this regard, this latest reference is part of a long tradition of bi-national efforts to define a strategy for managing the lakes and human uses of the Basin.

However, in recent decades there have been changes in the manner in which governments make resource management and investment decisions. Such decisions have been opened up to a larger public. As well, criteria used by governments to characterize the nature of water resource problems and to choose appropriate actions have been modified. The current decision making system is now far more complex than was the case at the time of the Boundary Waters Treaty. This complexity is evidenced in an array of resource management policies, numerous governmental institutions which have some authority on lake and shoreline use, and widely expanded opportunities for interests' access to and influence on decision making. Today, more is required than an evaluation of hydrology, engineering, costs and economic development benefits, supplemented by a public information function, in order to establish the extent of the problem, the opportunities for managing the issue, and the merits of specific measures. Evaluation is now done as a process of public (interest) interaction, which must be supported by technical analysis.

The water levels issue demands a new type of management. By themselves, the conventional options of resource management (attempting to control the physical environment to suit human activities) or shoreline management (attempting to control human activities to accommodate the physical environment) are insufficient to address the situation in the Great Lakes Basin. This report adopts a broader, issue management perspective, which focuses upon the concerns of interested parties and relates these to the responsibilities of governments and the decision making process. Resource management and shoreline management represent possible actions within this broader management challenge.

In response to this new planning environment, and reflecting the nature and scope of the water levels issue, this report is structured to identify the impediments and prospects for improved issue management. This involves establishing the context within which interested parties respond to changing conditions and interact with governments. It involves an exploration of the government policies and the institutions through which decisions are reached. It involves gaining an understanding of how the interests view the problem and why they adopt certain perspectives. This analysis leads to a synopsis of the responsibilities of individuals, organizations and governments, and provides specific directions for government action to help manage the water levels issue.